

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
U.S. Department of Health and Human Services) WC Docket No. 07-271
Substance Abuse and Mental Health Services)
Administration Petition for Permanent)
Reassignment of Three Toll Free Suicide)
Prevention Hotline Numbers)
)
Toll Free Service Access Codes) CC Docket No. 95-155

MEMORANDUM OPINION AND ORDER AND ORDER ON REVIEW

Adopted: October 14, 2009

Released: October 14, 2009

By the Commission: Commissioner McDowell dissenting and issuing a statement.

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I. INTRODUCTION

1. Today, the Federal Communications Commission (Commission) grants the request of the Substance Abuse and Mental Health Services Administration (SAMHSA), a component of the United States Department of Health and Human Services (HHS), to reassign permanently three toll free numbers used as suicide prevention hotlines from the Kristin Brooks Hope Center (KBHC) to SAMHSA.1 In this

1 See U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers, WC Docket No. 07-271 (filed Nov. 20, 2007) (SAMHSA Nov. 2007 Request); see also Pleading Cycle Established for Comments on the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration’s Petition for the Permanent Reassignment of Three Toll-Free Suicide Prevention Numbers, WC Docket No. 07-271, Public Notice, 22 FCC Rcd 20575 (Wireline Comp. Bur. 2007). The numbers at issue are 1-800-SUICIDE (1-800-784-2433), 1-888-SUICIDE (1-888-784-2433), and 1-877-SUICIDA (1-877-784-2432).

highly unusual situation, the Commission must exercise its plenary numbering authority² to deviate from its first-come, first-served rule with respect to the assignment of toll free numbers.³ Such deviation is necessary in this extraordinary circumstance to promote the public safety goal of suicide prevention.

2. For the reasons set forth below, the Commission finds that permanent reassignment of the three toll free numbers at issue to SAMHSA will ensure the long-term operation of the suicide prevention hotlines and will therefore best serve the public interest. Accordingly, we grant the request of SAMHSA and permanently reassign 1-800-SUICIDE (1-800-784-2433), 1-888-SUICIDE (1-888-784-2433), and 1-877-SUICIDA (1-877-784-2432) to that organization. Also for reasons set forth below, the Commission denies an application for review of the Bureau's temporary reassignment to SAMHSA filed by KBHC.⁴

II. BACKGROUND

3. KBHC is a private, non-profit organization that has operated toll free suicide prevention hotlines since 1998.⁵ The hotlines are routing mechanisms for hundreds of local suicide prevention organizations. When a person calls a hotline, the call is directly routed to a trained crisis counselor in the organization local to the caller who can assess the situation and determine the proper steps to follow to assist the caller.⁶ KBHC indirectly received funds to operate these hotlines through federal grants provided by SAMHSA until 2005.⁷ On August 25, 2006, Michael D. Leavitt, then the Secretary of HHS, wrote to then Commission Chairman Kevin Martin expressing concern that the telephone number 1-800-SUICIDE could be placed in disconnect status due to KBHC's financial difficulties, and requesting that 1-800-SUICIDE be temporarily reassigned to SAMHSA to avoid a "public health crisis."⁸ Despite further negotiations, in the following months the parties were unable to reach an agreement regarding the financial and operational responsibility for 1-800-SUICIDE.⁹ Therefore, on December 12, 2006, SAMHSA filed an emergency request for the Commission to permanently reassign to it five toll free numbers utilized as suicide prevention hotlines.¹⁰ Specifically, SAMHSA requested reassignment of 1-

² See 47 U.S.C. § 251(e)(1).

³ See 47 C.F.R. § 52.111 ("Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission").

⁴ Kristin Brooks Hope Center Application for Review, *In the Matter of Toll Free Service Access Codes*, CC Docket 95-155 (filed Feb. 21, 2007) (Application for Review).

⁵ See Comments of the Kristin Brooks Hope Center, *U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration's Petition for the Permanent Reassignment of Three Toll-Free Suicide Prevention Numbers*, WC Docket No. 07-271 (filed Nov. 20, 2007) (KBHC Comments on Permanent Reassignment) at 2-3. The 1-888-SUICIDE hotline was established in 1998; 1-800-SUICIDE was established in 1999.

⁶ See *id.* at 3.

⁷ For a more detailed history of the relationship between KBHC, SAMHSA, and the American Association of Suicidology (AAS), see *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 22 FCC Rcd 651, 651-53, paras. 2-5 (Wireline Comp. Bur. 2007) (*800-SUICIDE Order*). See also Supplemental Petition of the U.S. Department of Health and Human Services in Support of its Request for Reassignment of Toll Free Suicide Prevention Numbers, CC Docket No. 95-155 (filed Dec. 20, 2006) (SAMHSA 2006 Supplement) and the attached Declaration of Eric Broderick at 1.

⁸ See Letter from Michael O. Leavitt, Secretary, United States Department of Health and Human Services, to Kevin J. Martin, Chairman, FCC, CC Docket No. 95-155 at 2 (filed Aug. 25, 2006) (SAMHSA Aug. 2006 *Ex Parte* Letter).

⁹ See *800-SUICIDE Order*, 22 FCC Rcd at 652-53, paras. 4-5.

800-SUICIDE (1-800-784-2433) and two close variations of that number,¹¹ as well as two other numbers previously used as suicide prevention hotlines.¹²

4. The Bureau granted SAMHSA's request, in part, on January 22, 2007. Specifically, the Bureau temporarily reassigned three of the five national toll free numbers from KBHC to SAMHSA (1-800-SUICIDE, 1-888-SUICIDE, and 1-877-SUICIDA) for a period of one year.¹³ The Bureau explained that it was acting to avert a potential public health crisis: at the time, a disconnection of these toll free numbers could have left approximately 30,000 callers a month without assistance.¹⁴ The Bureau found the threat of this crisis to be real based on KBHC's inconsistent payment history with its service providers, the documented discord among the parties, and the threats of disconnection of these critical toll free numbers in the preceding months.¹⁵ On February 21, 2007, KBHC filed an application for review of the Bureau's order, and SAMHSA timely filed its opposition.¹⁶

5. On November 20, 2007, SAMHSA filed a request for permanent reassignment to SAMHSA of the three toll free numbers temporarily assigned to it to ensure the continuous operation of these numbers as public health resources.¹⁷ In response to SAMHSA's petition, KBHC filed comments stating that "the Commission should issue a Public Notice to refresh the record prior to taking any permanent action on the [application for review] or the SAMHSA [p]etition."¹⁸ In conjunction with an order extending the temporary reassignment of the three toll free numbers for 90 days (until April 21, 2008), the Bureau issued a public notice to refresh the record on the KBHC application for review.¹⁹ The Bureau noted that refreshing the record would assist the Commission in ensuring that the public interest is served with respect to the assignment of these numbers by allowing interested parties to provide any new information or arguments they believed to be relevant.²⁰ Since that time, both SAMHSA and KBHC have

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¹⁰ See Letter from Eric B. Broderick, D.D.S., M.P.H., Acting Deputy Administrator of the Substance Abuse and Mental Health Services Administration, Assistant Surgeon General, to Kevin J. Martin, Chairman, FCC, CC Docket No. 95-155 (filed Dec. 12, 2006) (SAMHSA Dec. 2006 Request).

¹¹ 1-888-SUICIDE (1-888-784-2433) and 1-877-SUICIDA (1-877-784-2432).

¹² 1-800-442-4673 (1-800-442-HOPE) and 1-800-827-7571.

¹³ See *800-SUICIDE Order*, 22 FCC Rcd at 651, para. 1.

¹⁴ See *id.* at 652, para. 4.

¹⁵ See *id.* at 654, paras. 8-9.

¹⁶ See KBHC Application for Review; see also Opposition to Application For Review of SAMHSA, *Toll Free Service Access Codes*, CC Docket No. 95-155 (filed Mar. 8, 2007) (SAMHSA Opposition to KBHC Application for Review).

¹⁷ See SAMHSA Nov. 2007 Request at 4, 11.

¹⁸ KBHC Comments on Permanent Reassignment at 2.

¹⁹ See *Toll Free Service Access Codes, Wireline Competition Bureau Seeks to Refresh the Record Regarding Kristin Brooks Hope Center's Application for Review of the 800-SUICIDE Order*, CC Docket No. 95-155, Public Notice, 22 FCC Rcd 21570 (2007).

²⁰ See KBHC Refresh PN at 2. The most recent extension of the temporary reassignment of the suicide prevention toll free numbers expires on October 14, 2009. See *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 22 FCC Rcd 21573 (Wireline Comp. Bur. 2007) (extension until Apr. 21, 2008); see also *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 23 FCC Rcd 6623 (Wireline Comp. Bur. 2008) (extension until July 17, 2008); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 23 FCC Rcd 11015 (Wireline Comp. Bur. 2008) (extension until Nov. 14, 2008); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 23 FCC 16659 (Wireline Comp. Bur. 2008) (extension until May 14, 2009); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 24 FCC 5638 (Wireline Comp. Bur. 2009) (extension until Aug. 14, 2009); see also *Toll Free*

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continued to seek permanent use of the three toll free numbers at issue here. KBHC has made numerous filings stating that it is financially able to resume control over the numbers, while SAMHSA also has made numerous filings to demonstrate its superior operation of the hotlines.²¹

III. DISCUSSION

A. SAMHSA's Request for Permanent Reassignment

1. Background

6. Since the temporary reassignment in January 2007, SAMHSA has been responsible for the operation, maintenance, and funding of the Suicide Prevention Hotlines.²² SAMHSA has incorporated the Hotlines into its National Suicide Prevention Lifeline (Lifeline) – a national network, managed through SAMHSA's grant program, that allows callers to be routed anywhere in the United States.²³ SAMHSA says it has taken many steps to enhance this service with increased access and surge capacity, and has invested in the future stability and growth of the network through new programs and training.²⁴ Since the date of its initial request, SAMHSA has provided additional resources for research, training, and stipends for the crisis centers.²⁵ Moreover, SAMHSA has awarded federal funds to operate Lifeline,

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Service Access Codes, CC Docket No. 95-155, Order, DA 09-1804, (rel. Aug. 13, 2009) (extension until October 14, 2009).

²¹ See, e.g., Letter from Danny E. Adams, Counsel for Kristin Brooks Hope Center, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-271 (filed Apr. 22, 2009) (KBHC Apr. 2009 *Ex Parte* Letter); see also Letter from Rina Hakimian, Senior Attorney for U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, to Michael J. Copps, Acting Chairman, FCC, CC Docket No. 95-155, WC Docket No. 07-271 (filed Apr. 22, 2009) (SAMHSA Apr. 2009 *Ex Parte* Letter); Letter from Danny E. Adams, Counsel for Kristin Brooks Hope Center, to Michael J. Copps, Acting Chairman, FCC, CC Docket No. 95-155, WC Docket No. 07-271 (filed May 5, 2009) (KBHC May 5, 2009 *Ex Parte* Letter); Letter from J. Isaac Himowitz, Counsel for Kristin Brooks Hope Center, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155, WC Docket No. 07-271 (filed May 7, 2009) (KBHC May 7, 2009 *Ex Parte* Letter); Letter from Rina Hakimian, Senior Attorney for U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155, WC Docket No. 07-271 (filed May 8, 2009) (SAMHSA May 2009 *Ex Parte* Letter); Letter from Eric K. Shinseki, Secretary for U.S. Department of Veterans Affairs, and Kathleen Sebelius, Secretary for U.S. Department of Health and Human Services, to Michael J. Copps, Acting Chairman, FCC, CC Docket No. 95-155, WC Docket No. 07-271 (filed May 13, 2009) (Joint HHS/VA May 2009 *Ex Parte* Letter).

²² We hereinafter refer to those three toll free numbers as the "Suicide Prevention Hotlines," or the "Hotlines."

²³ When a person makes a call to one of the Lifeline numbers, the call is routed to a crisis center that is local to the caller. These crisis centers, then, are linked to local emergency, mental health, and social service resources, which can be mobilized to help the caller in need. See SAMHSA Nov. 2007 Request at 5-7.

²⁴ See *id.*; see also, e.g., SAMHSA Opposition to KBHC Application for Review at 3-6; SAMHSA Nov. 2007 Request at 8-10; Reply Comments of the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration, *Toll Free Service Access Codes*, CC Docket No. 95-155, WC Docket No. 07-271 at 11 (filed Mar. 6, 2008) (SAMHSA Refresh *Ex Parte* Letter); SAMHSA Apr. 2009 *Ex Parte* Letter at 6; SAMHSA May 2009 *Ex Parte* Letter at 1; Letter from Rina Hakimian, Senior Attorney for U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, to Michael J. Copps, Acting Chairman, FCC, CC Docket No. 95-155, WC Docket No. 07-271 at 3 (filed June 15, 2009) (SAMHSA June 2009 *Ex Parte* Letter).

²⁵ See SAMHSA Refresh *Ex Parte* Letter at 11 (stating that, "In the current [2008] fiscal year, the National Suicide Prevention Lifeline will provide more than \$700,000 in direct financial support to those crisis centers. Also in the current fiscal year, 36 of the centers will take advantage of a SAMHSA-supported 5-day intensive suicide prevention training to enhance service quality, at an estimated cost of \$15,000 per center in the private market.");

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including the Suicide Prevention Hotlines, for five years.²⁶ SAMHSA states that the 1-800-SUICIDE number alone continues to handle approximately 20,000 calls per month and that “[i]t is uncontested that since SAMHSA has assumed operational and financial control of the numbers, the numbers have been open and available to callers in crisis without risk of interruption.”²⁷ SAMHSA also anticipates that the caller volume on these lines will continue to increase due to the state of the economy, the need for veterans assistance, and the increased attention devoted to suicide prevention, including SAMHSA’s national public awareness campaign for youth suicide prevention.²⁸

7. SAMHSA requests that the Commission exercise its exclusive authority over numbering to make the temporary reassignment of the Hotlines to SAMHSA permanent in order to ensure the continuous operation of these numbers as public health resources.²⁹ SAMHSA believes that telephone hotline crisis center services are effective interventions for people contemplating suicide, and that national toll free numbers assure that persons at risk have access to these services.³⁰ SAMHSA maintains that KBHC’s financial status created emergency circumstances that threatened the stability of these Suicide Prevention Hotlines, but that SAMHSA’s operation of these Hotlines would ensure continued access to these critical public health services.³¹

8. In response to SAMHSA’s petition, KBHC urges the Commission first to address its pending application for review and to refresh the record on its application for review prior to taking any permanent action on the SAMHSA petition for permanent reassignment.³² KBHC indicates that a delay

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Letter from Rina Hakimian, Senior Attorney for U.S. Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration, to Kevin J. Martin, Chairman, FCC, CC Docket No. 95-155, WC Docket No. 07-271 at 2-3 (filed June 25, 2008) (SAMHSA June 2008 *Ex Parte* Letter).

²⁶ See SAMHSA Nov. 2007 Request at 7.

²⁷ See *id.* at 9; see also SAMHSA Refresh *Ex Parte* Letter at 6.

²⁸ See SAMHSA Refresh *Ex Parte* Letter at 11; see also SAMHSA Apr. 2009 *Ex Parte* Letter at 6 (stating, “Since the FCC exercised its discretion to direct the allocation of toll-free numbers by temporarily reassigning the toll-free numbers to SAMHSA in January 2007, the number of callers in need has not abated, but rather has increased.”); SAMHSA June 2009 *Ex Parte* Letter at 2-3.

²⁹ See SAMHSA Refresh *Ex Parte* Letter at 4, 10-11; see also SAMHSA June 2008 *Ex Parte* Letter at 3; SAMHSA Apr. 2009 *Ex Parte* Letter at 7; SAMHSA June 2009 *Ex Parte* Letter at 3.

³⁰ See SAMHSA Refresh *Ex Parte* Letter at 4-5.

³¹ See *id.* at 5-6, 8-10; see also SAMHSA June 2008 *Ex Parte* Letter at 3 (stating “the risk to the public of calls going unanswered due to interrupted or curtailed service would have a high likelihood of recurring if the hotline numbers are returned to KBHC’s control.”); SAMHSA Apr. 2009 *Ex Parte* Letter at 6 (noting that “As part of the Lifeline, the numbers will be operated by a grantee, following public and open competition, in service of the public health needs of individuals in crisis, and will not be dependent on the financial condition of the grantee as they can be transferred to any subsequent grantee, should the need arise.”); SAMHSA June 2009 *Ex Parte* Letter at 3 (stating “SAMHSA’s commitment to maintaining public access to the network of suicide prevention hotlines remains strong and constant.”).

³² See KBHC Comments on Permanent Reassignment at 2. KBHC also states that the Commission should first respond to its December 4, 2007 Freedom of Information Act (FOIA) request before it takes any further action on this matter. The Commission responded to KBHC’s FOIA request on February 11, 2008. See Letter from Federal Communications Commission to J. Isaac Himowitz, Kelley Drye Collier Shannon, dated February 11, 2008, Control No. 2008-107; see also Reply Comments of the Kristin Brooks Hope Center, *Toll Free Service Access Codes*, CC Docket No. 95-155, *SAMHSA Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers* WC Docket No. 07-271 at 9 (filed Feb. 6, 2008) (KBHC Refresh Reply Comments).

would not unduly prejudice the public or any of the parties, as the numbers would remain open and available to all U.S. callers.³³

9. Throughout the record in this proceeding, KBHC has consistently argued for the return of the Hotlines.³⁴ To support its claim that it is “ready, willing, and capable of resuming operation” of the Suicide Prevention Hotlines,³⁵ KBHC states that it has settled its outstanding debts to Patriot Communications and AT&T, its previous service providers.³⁶ Moreover, KBHC claims that it has accumulated \$240,000 in cash reserves, which it argues covers the costs of maintaining the Hotlines for two years, while it continues its fundraising efforts.³⁷ KBHC also claims that it can effectively operate the Hotlines, once returned, through its service agreement for telecommunications services with Micktel Corporation. Those services, which are pre-paid for a year, include routing, reporting, real-time call tracing, and access to Micktel’s center management tools.³⁸

10. SAMHSA, in support of its request for permanent reassignment, argues that the costs to operate the Suicide Prevention Hotlines are higher than KBHC’s estimate and, therefore, KBHC is not in a financial position to sustain the call volume for 1-800-SUICIDE and the other Hotline numbers, on a

³³ See KBHC Refresh Reply Comments at 9. More recently KBHC states it “is willing to enter into a transition agreement with SAMHSA in order to ensure a safe and methodical transfer of the numbers over a period of six months.” See KBHC May 5, 2009 *Ex Parte* Letter at 3, n.3.

³⁴ See generally Letter from Danny E. Adams, Counsel for KBHC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 07-271 (filed July 10, 2008); Letter from Danny E. Adams, Counsel for Kristin Brooks Hope Center, to Hon. Kevin J. Martin, Chairman, FCC, CC Docket No. 95-155 (filed Nov. 12, 2008); Letter from Danny E. Adams, Counsel for Kristin Brooks Hope Center, to Michael J. Copps, Acting Chairman, FCC, CC Docket No. 95-155 (filed Feb. 25, 2009); KBHC Apr. 2009 *Ex Parte* Letter; KBHC May 5, 2009 *Ex Parte* Letter; KBHC May 7, 2009 *Ex Parte* Letter; KBHC June 2009 *Ex Parte* Letter .

³⁵ See KBHC Apr. 2009 *Ex Parte* Letter Attach. at 7 (filed Apr. 22, 2009).

³⁶ KBHC June 2009 *Ex Parte* Letter at 4, Affidavit of H. Reese Butler II at 4 (stating, “KBHC resolved all of its payment disputes with Patriot Communications in January 2007. Furthermore, KBHC entered into a final settlement agreement with AT&T in May 2008, that resolves all claims between the two companies; the final payment under that settlement occurred on August 16, 2008. As such, KBHC’s operation of the suicide prevention hotlines will be unencumbered by any debts previously owed by KBHC.”).

³⁷ See KBHC Apr. 2009 *Ex Parte* Letter Attach. at 9 (claiming its reserves of \$240,000 is sufficient for two years of uninterrupted service for the suicide prevention hotlines based on its historic call volumes and current agreement with Micktel); see also KBHC June 2009 *Ex Parte* Letter at 4 (stating that “KBHC’s improved fundraising efforts have also provided ever-increasing ballast to KBHC’s capabilities since KBHC recovered from its funding gap from AAS and SAMHSA. In fact, KBHC’s fundraising efforts have expanded KBHC resources by more than \$1 million in existing and pledged assets. For example, KBHC’s recently partnered with a record company for its annual ‘Pick Up the Phone’ music tour where sales of accompanying CDs are expected to raise \$250,000. Additionally, KBHC raised \$30,000 in just five days through several partnerships with groups like PostSecret.”). But see SAMHSA Apr. 2009 *Ex Parte* Letter at 5 (stating that the \$240,000 would be inadequate even if used exclusively to pay for telephone services.).

³⁸ See KBHC June 2009 *Ex Parte* Letter at 4, n.6 (noting that it has also “entered a similar agreement with Option Line providing redundancy and placing KBHC in a position to choose its vendor”); see also KBHC Apr. 2009 *Ex Parte* Letter Attach. at 16 (attaching a letter from David Sprouse of Micktel Corp. to Reese Butler stating, “Our platform for managing your 16,000+ routing assignments with real-time call tracking continues to perform beautifully. In addition, all preparations for processing 1-800-SUICIDE calls have been completed and we are ready to route those calls. As your timeframe becomes firm, we can finalize the specific transition steps and layout the precise timeline for the seamless cut-over.”); Letter from Danny E. Adams, Counsel for Kristin Brooks Hope Center, to Hon. Kevin J. Martin, Chairman, FCC, CC Docket No. 95-155, WC Docket No. 07-271 at 1 (filed Apr. 2, 2008) (stating that KBHC has prepaid for one year, including payment for the Hotlines in question, to further reassure the Commission of its financial stability).

continuing basis, without substantial risk of interruption.³⁹ SAMHSA notes that it has made “numerous significant improvements” since the temporary reassignment, including increasing the network’s surge capacity, implementing a more efficient caller ID system, funding for research and improvements in suicide prevention, and providing stipends to the networked crisis centers to offset the expense of answering the Lifeline toll free numbers.⁴⁰ SAMHSA also claims its Lifeline Network received over 54,000 calls during May 2009, which is the highest number of monthly calls ever received in the history of the Lifeline.⁴¹ In addition, SAMHSA explains its work with the Department of Veterans Affairs (VA) to develop the Veterans Suicide Prevention Hotline. That Hotline connects veterans at risk and their families to critical VA services across the country, including suicide prevention coordinators in every VA medical center nationwide.⁴² According to SAMHSA’s records, in the first two months of 2009, the Veterans’ Call Center received more than 300 calls daily, and a quarter of these callers dialed 1-800-SUICIDE for assistance.⁴³

11. In addition to the comments of KBHC and SAMHSA, the Commission received hundreds of *ex parte* filings in response to SAMHSA’s request and the Bureau’s request to refresh the record on KBHC’s application for review. A large number of these filers who have used the Hotlines, or knew someone who has used the Hotlines, support assigning the numbers to KBHC. These commenters generally say that the numbers should be returned to KBHC because they would be better utilized by the founding non-profit entity, rather than controlled by a government agency.⁴⁴ Some of these commenters are also concerned that governmental control of the Suicide Prevention Hotlines would impair privacy rights.⁴⁵ An equally large number of commenters, mostly crisis center directors, counselors, and workers involved in suicide prevention, advocate assigning the numbers to SAMHSA. These commenters state

³⁹ SAMHSA estimates, based on operating the Suicide Prevention Hotlines since the temporary reassignment in January 2007, that the telephone services to support a call volume of more than 20,000 calls monthly to the Hotlines cost an average of \$28,320 monthly (over \$330,000 annually). See SAMHSA June 2008 *Ex Parte* Letter at 2-3, Declaration of Eric Broderick at 2; see also SAMHSA Refresh *Ex Parte* Letter at 6. KBHC disagrees with SAMHSA’s estimate, arguing that it costs KBHC approximately \$9,100 a month, or approximately \$110,000 annually to run the hotlines. KBHC claims that it can operate the lines more efficiently, and SAMHSA’s estimate “fail[s] to consider service options available from competitive carriers.” See KBHC Apr. 2009 *Ex Parte* Letter Attach. at 9.

⁴⁰ See SAMHSA Refresh *Ex Parte* Letter at 8-9; see also SAMHSA June 2009 *Ex Parte* Letter at 3 (stating that the services offered by crisis centers have been enhanced and additional services to the public have been added); SAMHSA Apr. 2009 *Ex Parte* Letter at 4 (stating that SAMHSA’s grantee monitors the Lifeline system, generating daily reports on connectivity and modifying the system as needed).

⁴¹ See SAMHSA June 2009 *Ex Parte* Letter at 2, Enclosure C.

⁴² See SAMHSA Apr. 2009 *Ex Parte* Letter at 6; see also Joint HHS/VA May 2009 *Ex Parte* Letter at 1.

⁴³ See SAMHSA Apr. 2009 *Ex Parte* Letter at 4. KBHC explains that it has its own veteran-oriented suicide prevention hotline, 877-VET2VET, which connects veteran callers in need with trained peer veterans. See KBHC Apr. 2009 *Ex Parte* Letter Attach. at 18. KBHC claims it is willing and eager to work with the VA to offer callers to 800-SUICIDE the option of being transferred to VA suicide prevention counselors just as SAMHSA describes. See KBHC May 5, 2009 *Ex Parte* Letter at 3.

⁴⁴ See, e.g., Letter from Larisa Wanserski, CC Docket 95-155 (filed Jan. 22, 2008); Letter from Marie Duffin, CC Docket 95-155 (filed Jan. 22, 2008); Letter from Deirdre McDaniel, CC Docket 95-155 (filed Jan. 22, 2008); Letter from Samantha Gonski, CC Docket 95-155 (filed Jan. 22, 2008); Letter from Donald L. Feinberg, WC Docket No. 07-271 (filed Jan. 23, 2008); Letter from Karen McLean, WC Docket No. 07-271 (filed Jan. 23, 2008); Letter from Rebecca Baker, WC Docket No. 07-271 (filed Apr. 23, 2008).

⁴⁵ See KBHC Refresh Reply Comments at 8; see also, e.g., Letter from Colin Hill, CC Docket No. 95-155 (filed Jan. 22, 2008); Letter from Erica Cadigan, CC Docket No. 95-155 (filed Jan. 22, 2008); Letter from Stephanie Vander Veen, CC Docket No. 95-155 (filed Jan. 22, 2008); Letter from Linda Kernohan, WC Docket No. 07-271 (filed Jan. 23, 2008); Letter from Thomas Bishop, WC Docket No. 07-271 (filed Jan. 23, 2008).

generally that the management of the Hotlines and their associated programs is better organized and executed more professionally by SAMHSA than by KBHC.⁴⁶ These commenters argue that SAMHSA provides a far superior quality of service, and that its programs give them the tools, information, and training to be more effective in suicide prevention.⁴⁷

2. Discussion

12. Under the Communications Act, the Commission has exclusive jurisdiction to administer numbering resources,⁴⁸ as well as a statutory mandate to promote the safety of life and property.⁴⁹ The Commission has long recognized that toll free numbers are a scarce public resource⁵⁰ and are not the property of the individual entities to which they are assigned.⁵¹ The assignment of toll free numbers is ultimately subject to the Commission's direction.⁵²

13. That being said, the Commission has only once formally directed the assignment of a toll free number and, in that instance as well, that assignment was necessitated by public safety concerns.⁵³ In the *Red Cross Permanent Reassignment Order*, the Commission found that, in the wake of Hurricanes Katrina and Rita, "permanent assignment of 1-800-RED-CROSS and 1-888-RED-CROSS to the American Red Cross will serve the overwhelming public interest in assisting the disaster recovery efforts of the Red Cross related to hurricanes and other natural disasters."⁵⁴ In that case, as in the present case, there were "compelling public interest benefits" in deviating from a first-come, first-served rule and reassigning toll free numbers from one organization to another.⁵⁵ In the present case, the Bureau temporarily reassigned the Suicide Prevention Hotline numbers from KBHC to avoid an imminent public safety crisis.⁵⁶ Specifically, the Bureau sought to minimize the potential loss of life due to callers in need being unable to connect immediately with a local crisis center that could dispatch emergency services.⁵⁷

⁴⁶ See *infra* para. 19.

⁴⁷ See, e.g., Letter from Mary Ann Abate, CC Docket 95-155 (filed Jan. 22, 2008); Letter from Christi Letsom, The Crisis Line, CC Docket 95-155 (filed Jan. 22, 2008); Letter from Joseph Cordero, CC Docket 95-155 (filed Jan. 17, 2008); Letter from John Bateson, Contra Costa Crisis Center, WC Docket No. 07-271 (filed Dec. 12, 2007); Letter from Shye L. Louis, WC Docket No. 07-271 (filed Dec. 12, 2007); see also *infra* note 79.

⁴⁸ See 47 U.S.C. § 251(e)(1).

⁴⁹ See *id.* § 151 ("Federal Communications Commission created [f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications....").

⁵⁰ See *Toll Free Service Access Codes*, CC Docket No. 95-155, Second Report and Order, 12 FCC Rcd 11162, 11178-79, para. 22 (1997) (*Toll Free Second Report and Order*).

⁵¹ See *id.* at 11185-86, para. 30.

⁵² See 47 C.F.R. § 52.111.

⁵³ See *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 20 FCC Rcd 15089 (2005) (*Red Cross Temporary Reassignment Order*); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 21 FCC Rcd 9925 (Wireline Comp. Bur. 2006) (*Red Cross Permanent Reassignment Order*).

⁵⁴ *Red Cross Permanent Reassignment Order*, 21 FCC Rcd at 9927, para. 5.

⁵⁵ *Id.* at 9927 para. 6.

⁵⁶ See *supra* para. 4.

⁵⁷ See generally *800-SUICIDE Order*.

14. Our role as a regulator does not, in the normal course, encompass choosing among parties seeking use of the same number. This circumstance is unique because the Commission was thrust into this role in late 2006, when a federal agency brought to our attention that the Suicide Prevention Hotlines were in danger of disconnection. At that time, we had to act quickly in order to avert a public safety crisis. Now, two and one-half years later, the Commission must look at the totality of the circumstances presented to us and decide, finally, whether the Hotline numbers should be assigned to either KBHC or SAMHSA permanently. We do not make this decision easily. In doing so, our overriding priority is the long-term stability of the Hotlines and, in turn, avoidance of another potential public safety crisis in the future. We note that both of the organizations involved in this matter have made valuable contributions to the public interest in promoting the safety of life through the prevention of suicide. We also acknowledge that KBHC has been assigned certain of these numbers since 1998.⁵⁸ In choosing one of these organizations over the other as the assignee of the Hotlines, the Commission must err on the side of caution and choose the entity that we believe is more capable of operating the Hotlines long-term. That entity is SAMHSA. For the reasons discussed below, we find that the permanent reassignment of the Suicide Prevention Hotlines to SAMHSA will best serve the overwhelming public interest in promoting the safety of life through the prevention of suicide.⁵⁹

15. Although KBHC's purpose and mission are to be commended, we continue to be concerned about its ability, long-term, to finance the Hotlines. As stated in our *800-SUICIDE Order*, it is critical to ensure that individuals at risk for suicide receive the assistance they need.⁶⁰ The Bureau concluded, in that Order, that KBHC's financial vulnerability in 2006 and 2007 posed a significant threat to the continued availability of the critical public service provided by the Hotlines.⁶¹ Although KBHC states it has accumulated some cash reserves,⁶² we are not convinced that the \$240,000 it has accumulated is sufficient to prevent future disruptions of the Hotlines. Specifically, we are concerned that KBHC could default on its payments for telecommunications service and its service provider could cease routing telephone calls to the Hotlines.

16. Notwithstanding the parties' disagreement over the cost to operate the Hotlines,⁶³ and assuming the \$240,000 cash reserves of KBHC are sufficient for two years of operation of the numbers, the public interest objective of suicide prevention requires that we ensure that the Hotlines will operate effectively, long-term. Specifically, SAMHSA reports that calls made to Suicide Prevention Hotlines are on the rise,⁶⁴ and if funding is not secured for the future years, a public health crisis could occur repeatedly, destabilizing the Hotlines and requiring continuing Commission intervention. Moreover, although KBHC claims it has a service agreement with Micktel to handle the call volume of the Hotlines without long-term funding, we could be faced with a similar situation as occurred previously in which KBHC was unable to pay its service provider for telecommunication services and the service provider threatened disconnection. The Commission cannot allow the Hotlines to face possible disconnection again.

⁵⁸ See KBHC Apr. 2009 *Ex Parte* Letter Attach. at 3.

⁵⁹ We intervene in this extraordinary manner solely to avert a public safety crisis in the future.

⁶⁰ See *800-SUICIDE Order*, 22 FCC Rcd at 653, para. 6.

⁶¹ See *id.* at 654, para. 9.

⁶² KBHC Apr. 2009 *Ex Parte* Letter Attach. at 9 (claiming it has cash reserves of \$240,000).

⁶³ See *supra* note 39.

⁶⁴ See SAMHSA June 2009 *Ex Parte* Letter at 2, Enclosure C (reporting that its Lifeline Network received over 54,000 calls during May 2009, which is the highest number of monthly calls ever received in the history of the Lifeline).

17. KBHC asserts that its fundraising efforts have improved and that its resources have been expanded with new existing and pledged assets.⁶⁵ Such improved fundraising efforts, however, do not guarantee that KBHC would be able to commit sufficient funding to operate the Hotlines for more than two years – the length of its current service commitment with Micktel. SAMHSA can guarantee this, and can guarantee it indefinitely. SAMHSA has been completely responsible for the operation, funding, and maintenance of the Suicide Prevention Hotlines without incident since January 2007.⁶⁶ According to SAMHSA, it has already invested over \$15 million in its programs and network and has committed to continue investing equally large sums in the future.⁶⁷ Moreover, SAMHSA states that its actions in supporting and operating the Hotlines have alleviated the risk to public safety and its continued “support for the lines through permanent reassignment will ensure that this risk to callers is eliminated.”⁶⁸ We agree with SAMHSA on this point. SAMHSA has taken its temporary responsibility for the Hotlines very seriously and has demonstrated a strong commitment to operate the Hotlines in the most reliable and comprehensive manner possible. Specifically, it continues to provide support to the crisis centers handling Hotline calls, including training, information, stipends, and additional research funding to assist the crisis centers and suicide prevention specialists in the future.⁶⁹ Accordingly, despite KBHC’s claims that its calling rates are significantly cheaper, and thereby indicate a more efficient delivery of services to the public,⁷⁰ SAMHSA is funding much more than telecommunications services; hence, its cost figures are well above those of KBHC.⁷¹

18. Moreover, as stated above,⁷² SAMHSA has partnered with the VA to offer a new service to assist veterans in crisis, utilizing Lifeline, and has launched a national public awareness campaign for youth suicide prevention.⁷³ According to SAMHSA, its relationship with the VA began in July 2007, once the Hotlines were temporarily reassigned to SAMHSA.⁷⁴ Since that time, the number of calls to SAMHSA’s Lifeline network answered by the VA for or on behalf of veterans has increased, and reflects increased demand for crisis counseling and assistance to veterans.⁷⁵ Indeed, in a joint letter the current Secretaries of HHS and the VA recently advised the Commission that it should permanently reassign the

⁶⁵ See *supra* note 37.

⁶⁶ See generally SAMHSA Nov. 2007 Request at 11; SAMHSA Refresh *Ex Parte* Letter at 6-7; SAMHSA Apr. 2009 *Ex Parte* Letter at 4; SAMHSA June 2009 *Ex Parte* Letter at 3.

⁶⁷ See SAMHSA Refresh *Ex Parte* Letter at 11; see also SAMHSA Refresh *Ex Parte* Letter at 11 (stating, “SAMHSA has committed another \$14.4 million to suicide prevention hotline network through 2011”).

⁶⁸ See *id.* at 10.

⁶⁹ See, e.g., SAMHSA Refresh *Ex Parte* Letter at 11; SAMHSA Apr. 2009 *Ex Parte* Letter at 6; SAMHSA May 2009 *Ex Parte* Letter at 1; SAMHSA June 2009 *Ex Parte* Letter at 3 (stating, “Since the Commission exercised its discretion to direct the allocation of toll-free numbers by temporarily reassigning the suicide prevention numbers to SAMHSA in January 2007, the number of callers has expanded regularly. The services offered by crisis centers have been enhanced and additional services to the public have been added.”).

⁷⁰ See KBHC June 2009 *Ex Parte* Letter at 4, Affidavit of H. Reese Butler II at 4.

⁷¹ See SAMHSA Apr. 2009 *Ex Parte* Letter at 4 (stating that the services provided extend well beyond the payment of telephone charges); see also *id.* at 5 (stating that the KBHC reserves of \$240,000 would be inadequate, even in paying exclusively for telephone services.). For these reasons, we disagree with KBHC’s claim that SAMHSA has merely been a custodian of the Hotlines, and has not significantly invested in them. ⁷¹ See KBHC Refresh Reply Comments at 9-10.

⁷² See *supra* para. 10.

⁷³ See SAMHSA Nov. 2007 Request at 7, 11.

⁷⁴ See SAMHSA Apr. 2009 *Ex Parte* Letter at 6; see also SAMHSA June 2009 *Ex Parte* Letter at 1-2.

⁷⁵ SAMHSA June 2009 *Ex Parte* Letter at 2, Enclosure B (showing that the numbers of calls have increased by 1,000 per month between March 2009 and May 2009).

Hotlines to SAMHSA so “we can continue providing our Nation’s citizens including our veterans the consistent high quality of service they deserve.”⁷⁶

19. We also find compelling the support that SAMHSA’s operation of the Hotlines has received from crisis center managers. Such support includes statements that since SAMHSA assumed responsibility for the Hotlines, they have been “exceptionally well managed,”⁷⁷ and more specific statements of open communications, ongoing training, improved lethality assessments, stipends, and assistance in crisis center fundraising.⁷⁸ These crisis centers are at the front lines of suicide prevention and maintain that SAMHSA, through its Lifeline, has increased the quality of suicide prevention services they can offer.⁷⁹

20. The chief concern of those commenters advocating support for KBHC’s operation of the Hotlines is that the governmental control of the Suicide Prevention Hotline numbers would impair privacy rights.⁸⁰ We do not share this concern. SAMHSA explains that while the individual local crisis centers may gather basic demographic and general information, SAMHSA does not collect or request personal information identifying callers.⁸¹ According to SAMHSA, “personal information is never

⁷⁶ Joint HHS/VA May 2009 *Ex Parte* Letter at 1.

⁷⁷ See Letter from John Bateson, Executive Director, Contra Costa Crisis, Docket No. 07-271 at 1 (filed Apr. 30, 2008) (also stating that having SAMHSA operate the numbers “is the best way to ensure their continued, uninterrupted operation.”).

⁷⁸ See Letter from Carol Loftur-Thun, Executive Director, CrisisLink, Tim Jansen, Executive Director, Community Crisis Services, Inc., Michele Hughes, Executive Director, Life Crisis Center Hotline, Molly McCoy-Brack, Executive Director, Agora Crisis Center, Jennifer Battle, MHRMRA Helpline Director, Shye Louis, Operations Manager, ABVI Goodwill, and Pat Tedford, Executive Director, CONTACTLifeline, WC Docket 07-271 at 1-2 (filed May 11, 2009) (Joint Crisis Center May 2009 *Ex Parte* Letter). Moreover, numerous crisis hotline volunteer counselors from CrisisLink, a suicide prevention agency in Arlington, Virginia, filed comments in the record discussing the benefit they have received from the “stability of 1-800-SUICIDE as administrated by SAMHSA” and urging the Commission to “permanently reassign 1-800-SUICIDE to SAMHSA”). See e.g., Letter from Olivia Meyer to FCC, WC Docket No. 07-271 (filed Aug. 28, 2009); Letter from Cindy Bare to FCC, WC Docket No. 07-271 (filed Aug. 19, 2009); Letter from Natalie Chin to FCC, WC Docket No. 07-271 (filed Aug. 20, 2009).

⁷⁹ See, e.g., Letter from Pamela Schuble, COO for Behavioral Health Link, WC Docket 07-271 (filed May 13, 2009) (stating that this national network has significantly enhanced services, including significant researchers in the area of suicide, communicating information, allowing participation in the development of the system, establishing guidelines, etc.); Letter from Dale Emme, Executive Director/Co-Founder, Yellow Ribbon, and R. Darlene Emme, Founder/Deputy Directory, Yellow Ribbon, to Michael J. Copps, Acting Chairman, FCC, WC Docket No. 07-271 at 2 (filed June 8, 2008) (finding SAMHSA’s commitment, professionalism and dedication to saving lives unwavering, asking the Commission to permanently reassign 1-800-SUICIDE to SAMHSA, urging the Commission to keep this valuable resource in the hands that we would trust with our youth); Joint Crisis Center May 2009 *Ex Parte* Letter at 1-3 (noting the significant differences between KBHC and NSPL/SAMHSA in the administration of the 1-800-SUICIDE number, namely, with SAMHSA, unlike KBHC, there is regular communication, no dropped calls, ongoing trainings/webinars, establishment of best practices, research studies, new technical tools, annual stipends, and a more positive, stable and productive experience).

⁸⁰ See KBHC Refresh Reply Comments at 8; see also *supra* note 45.

⁸¹ See SAMHSA Refresh *Ex Parte* Letter at 9-10; SAMHSA Request for Applications, SM 07-009, “Cooperative Agreement for Networking, Certifying, and Training Suicide Prevention Hotlines,” at http://www.samhsa.gov/Grants/2007/sm_07_009.aspx (visited July 31, 2009). Each applicant for a grant to manage the Lifeline network must complete a Request for Application, in which it must explain how it will ensure privacy and confidentiality, including who will collect data and how it will be collected. In addition, the applicant must describe how it will use data collection instruments, where data will be stored, who will or will not have access to information, and how the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data. If applicable, grantees

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requested by or shared with the federal government.”⁸² In addition, no party cites any instance in which a breach of privacy has occurred since SAMHSA was granted temporary assignment of the Hotlines.⁸³

21. Given the evidence, it does not appear that KBHC has the financial resources to maintain the Suicide Prevention Hotlines long-term.⁸⁴ Moreover, due to the strong evidence that SAMHSA has used and will continue to use these numbers to provide a financially stable, top-quality service for the long-term, we conclude that the permanent reassignment of the Suicide Prevention Hotlines to SAMHSA will serve the overwhelming public interest in the prevention of suicide. In short, we believe that assigning these numbers to SAMHSA best ensures the long-term financial viability of the Hotlines. While these numbers will be operated by grantees as part of SAMHSA’s Lifeline Network, their operation will not be dependent on the financial condition of those grantees. Once permanently assigned to SAMHSA, those Hotline numbers can be used by any grantees SAMHSA chooses to fund. By stabilizing central telephonic points of contact for the American public, our permanent reassignment of these toll free numbers helps SAMHSA fulfill its mission to establish and implement a comprehensive program to improve the provision of treatment and related service to individuals with mental illness and to provide suicide prevention services and promote mental health nationwide.⁸⁵

22. We note that SAMHSA’s grants are subject to public and open competition.⁸⁶ Therefore, KBHC can participate in the competitive bidding process for SAMHSA’s grant program once the current grant expires,⁸⁷ and could regain use of the Hotline numbers as a SAMHSA grantee. In the meantime, KBHC can continue its valuable suicide prevention activities, including outreach, fundraising⁸⁸ and the operation of its 11 other crisis counseling toll free numbers.⁸⁹

23. We therefore direct the toll free database administrator, Database Service Management, Inc. (DSMI), to maintain the assignment of the Suicide Prevention Hotlines 1-800-SUICIDE (1-800-784-2433), 1-888-SUICIDE (1-888-784-2433), and 1-877-SUICIDA (1-877-784-2432) to the Responsible

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must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of 42 C.F.R., Part II.

⁸² See SAMHSA Refresh *Ex Parte* Letter at 9.

⁸³ Indeed, one crisis center director notes “Crisis centers have worked for 40 or more years to establish credibility and confidence in the lifesaving work we do. Crisis center staff and volunteers nationwide are some of the most dedicated, talented individuals in our communities, who are committed to the highest ethical and professional standards of protecting confidentiality and protecting our callers.” See Letter from Kimberly R. Jones, Director, Careline Crisis Intervention, WC Docket No. 07-271 at 1-2 (filed May 11, 2009).

⁸⁴ See KBHC Refresh Reply Comments at 5-6. SAMHSA Nov. 2007 Request at 8-10; SAMHSA Refresh *Ex Parte* Letter at 6; SAMHSA June 2008 *Ex Parte* Letter at 3 (stating “There is no demonstrable record that the circumstances that existed prior to January 2007 have changed with respect to KBHC’s financial instability that imperiled the operation of the suicide prevention hotlines.”); SAMHSA Apr. 2009 *Ex Parte* Letter at 5 (claiming KBHC fails to support its claims of financial stability).

⁸⁵ See SAMHSA Opposition to Application for Review at 7.

⁸⁶ See SAMHSA Apr. 2009 *Ex Parte* Letter at 6.

⁸⁷ See *id.* at n.15 (explaining that SAMHSA Grant Award Number 2 SM056176-06 was awarded to Link2Health Solutions Inc. in 2007 and the length of the project period and the budget period is up to five years).

⁸⁸ See KBHC Apr. 2009 *Ex Parte* Letter Attach. at 10 (explaining its fundraising efforts, including its “Pick Up the Phone Tour,” 99 Club Fund Raising Program, and partnership with PostSecret.com).

⁸⁹ See *id.* at 8.

Organization (RespOrg) of SAMHSA's choice.⁹⁰ DSMI must facilitate any porting requests received from SAMHSA or its RespOrg.

B. Application for Review of the *800-SUICIDE Order*

1. Background

24. In the *800-SUICIDE Order*, the Bureau temporarily reassigned the three Suicide Prevention Hotlines to SAMHSA, concluding that its action was "critical to minimize the potential loss of life due to callers in need being unable to connect immediately with a crisis center that can dispatch emergency services."⁹¹ The Bureau took this action, on delegated authority, pursuant to the Commission's exclusive jurisdiction over numbering resources and its statutory obligation to consider the best interests of the public.⁹²

25. In its application for review of the *800-SUICIDE Order*,⁹³ KBHC claims that the Order was "arbitrary and capricious" in violation of the Administrative Procedure Act (APA),⁹⁴ beyond the authority delegated to the Bureau,⁹⁵ in violation of the Due Process Clause,⁹⁶ and not in the public interest.⁹⁷ For all the reasons set forth below, we conclude that the Bureau acted appropriately and within its authority in temporarily reassigning the Suicide Prevention Hotlines. Therefore, we affirm that decision and deny KBHC's application for review.

2. Legal Analysis

26. *Arbitrary and Capricious Argument.* KBHC claims that the Bureau's *800-SUICIDE Order* violated section 706(2)(A) of the APA and that the Order is arbitrary and capricious because: (1) there was no "emergency" justifying departure from normal procedures regarding assignment of toll free numbers; (2) there was no record regarding KBHC's finances; and (3) KBHC's finances were not relevant.⁹⁸ We disagree on all these points.⁹⁹

27. First, we disagree that there was no emergency justifying the Bureau's action. The circumstances surrounding the Hotlines were highly unstable at that time.¹⁰⁰ The parties involved – KBHC, SAMHSA, Patriot Communications, and McLeod¹⁰¹ – had been involved in weeks of on-again

⁹⁰ A RespOrg is an entity chosen by a subscriber to manage its records in the toll free database. See 47 C.F.R. § 52.101(b).

⁹¹ *800-SUICIDE Order*, 22 FCC Rcd at 651, para. 1.

⁹² See 47 U.S.C. § 251(e)(1); see also *800-SUICIDE Order*, 22 FCC Rcd at 653-54, paras. 7-8.

⁹³ See generally KBHC Application for Review.

⁹⁴ See *id.* at 6-9.

⁹⁵ See *id.* at 10-12.

⁹⁶ See *id.* at 12-14.

⁹⁷ See *id.* at 14-17.

⁹⁸ See *id.* at 6-9, citing 5 U.S.C. § 706 (A)(2).

⁹⁹ We note that section 706(2)(A) of the APA addresses judicial review. See 5 U.S.C. § 706, Scope of Review. In any event, we conclude that the Bureau's actions were neither arbitrary nor capricious.

¹⁰⁰ See *800-SUICIDE Order*, 22 FCC Rcd at 654, para. 9; see also SAMHSA Opposition to KBHC Application for Review at 3; SAMHSA Nov. 2007 Request at 8-10.

¹⁰¹ McLeodUSA Telecommunications Services, Inc. (McLeod) was the RespOrg for KBHC and the Suicide Prevention Hotlines in January 2007, when the numbers were temporarily reassigned to SAMHSA. In the *800-*

off-again discussions regarding the future financing and operation of the Hotlines. KBHC had a history of being unable to pay its service providers, as noted in the *800-SUICIDE Order* and – importantly for our decision on this application for review – as evidenced in the record on which that Order was based.¹⁰² The concerns about KBHC’s ability to fund the Hotlines led the Bureau to the correct conclusion that this important public service was in jeopardy. We find that if the Bureau had not acted when it did, and if the Hotlines had been disconnected for non-payment, there would have been a grave risk for thousands of Americans in distress yet unable to connect directly to counselors. Therefore, contrary to KBHC’s assertions, the record clearly demonstrates that KBHC’s financial instability and the resulting threat that the Hotlines could be disconnected at any time created an emergency that warranted a timely response by the Bureau to prevent a public health crisis.¹⁰³

28. We also disagree that the Order was arbitrary and capricious because there was insufficient record evidence regarding KBHC’s finances. The Bureau pointed to filings in the record to explain that SAMHSA had assumed financial and operational responsibility for the Hotlines because of KBHC’s difficulties in paying its service providers.¹⁰⁴ KBHC claims in its application for review that there was no real threat of service disconnection because SAMHSA would continue to assist financially.¹⁰⁵ Even at the time of the Order, however, the record did not reflect any long-term commitment from SAMHSA to fund the Hotlines while they were under KBHC’s control. To the contrary, as SAMHSA explains, SAMHSA only agreed to pay service provider invoices on behalf of KBHC temporarily “until the issues surrounding KBHC’s funding were resolved.”¹⁰⁶ In addition, KBHC claims that a letter from SAMHSA “made clear that those numbers would continue to operate in the future,” but that letter only reinforces the Bureau’s findings regarding financial instability.¹⁰⁷ In the brief letter, in response to a disconnection notice by Patriot Communications, SAMHSA merely requested that Patriot “continue support for” the Suicide

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SUICIDE Order, the Bureau directed McLeod to port the numbers to the RespOrg of SAMHSA’s choice. *See 800-SUICIDE Order*, 22 FCC Rcd at 651, para. 1.

¹⁰² *See 800-SUICIDE Order*, 22 FCC Rcd at 654, paras. 8-9 (referring to record evidence from SAMHSA, KBHC, and AT&T); *see also* Letter from Suzanne Yelen, Counsel for Patriot Communications LLC, to Thomas J. Navin, Chief, WCB, FCC, CC Docket No. 95-155 (filed Jan. 16, 2007); SAMHSA 2006 Supplement, Broderick Decl. at 2; Comments of the Kristin Brooks Hope Center, SAMHSA Emergency Request for the Permanent Reassignment of Five Toll Free Suicide Prevention Numbers, CC Docket No. 95-155 at 4 (filed Dec. 20, 2006); Letter from Michelle Sclater, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket 95-155 at 1. The parties have since made filings that affirm and expand upon the facts on which the Bureau relied. *See* SAMHSA Opposition to KBHC Application for Review at 3-6; SAMHSA Nov. 2007 Request at 8-10; SAMHSA Refresh *Ex Parte* Letter at 4-5 (citing SAMHSA’s earlier petitions and public filings). SAMHSA states that in August 2006, KBHC owed Patriot Communications “more than \$67,000.00,” and that Patriot had informed SAMHSA on several occasions that the hotlines were in imminent danger of being disconnected. In addition, SAMHSA cites a letter filed by Patriot Communications regarding KBHC’s consistent failure to pay for its services. SAMHSA Refresh *Ex Parte* letter at 4-5; *see also* KBHC May 5, 2009 *Ex Parte* Letter at 2 (confirming that KBHC owed approximately \$720,000 and stating that \$525,000 of that amount was due to early termination fees).

¹⁰³ *See* KBHC Application for Review at 7-10.

¹⁰⁴ *See 800-SUICIDE Order*, 22 FCC Rcd at 654, paras. 8-9 (citing letters and declarations from SAMHSA and comments from KBHC); *see also supra* note 102 (citing evidence the Bureau relied upon regarding KBHC’s financial instability).

¹⁰⁵ *See* KBHC Application for Review at 7, 9; *see also* SAMHSA 2006 Supplement, attachment Letter from Lee Hejamanowski, Counsel for Patriot Communications LLC, to Rina Hakimian, SAMHSA, *et al.*, dated November 28, 2006 (indicating Patriot Communication’s intent to terminate the service of the Suicide Prevention Hotlines by January 9, 2007, unless the parties executed a written agreement regarding payment for Patriot’s services).

¹⁰⁶ SAMHSA Opposition to KBHC Application for Review at 6.

¹⁰⁷ KBHC Application for Review at 9.

Prevention Hotlines until a more comprehensive response could be rendered.¹⁰⁸ This one sentence did not make clear that SAMHSA would guarantee payment and the continued operation for these numbers indefinitely *if they were under KBHC's control*. SAMHSA notes that even though it provided monetary support through grants and on an *ad hoc* basis, there was no long-term plan for SAMHSA to step in whenever KBHC's funds were lacking.¹⁰⁹ In short, the Bureau was justified in doubting whether KBHC had the financial ability to maintain the Hotlines, and those doubts were supported in the record.

29. Finally, we disagree with KBHC's assertion that its financial stability was irrelevant. KBHC argues that it could have been "penniless" and SAMHSA would have continued to fund KBHC's operation of the Hotlines.¹¹⁰ As we just explained, SAMHSA does not agree with that statement. The Bureau correctly took into account KBHC's lack of financial stability. Thus, the Bureau's reassignment of the Hotlines to SAMHSA was neither arbitrary nor capricious. Rather, its response to this difficult issue was thoroughly and carefully considered, and well-supported by the record.

30. ***Delegated Authority Argument.*** KBHC claims that in its Order transferring the Hotlines to SAMHSA, the Bureau "assumed the unprecedented authority to transfer toll free numbers outside of the toll free rules in the absence of an emergency."¹¹¹ We disagree. As noted above, the Communications Act grants the Commission exclusive jurisdiction over numbering matters.¹¹² The Commission's authority to act on these matters has been delegated to the Bureau unless there is a novel question of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines.¹¹³ In 2005, the Commission temporarily reassigned the 800-RED-CROSS number to the National Chapter of the American Red Cross.¹¹⁴ Subsequently, the Bureau made this reassignment permanent.¹¹⁵ The present scenario, like the 800-RED-CROSS scenario, involved the reassignment of toll free numbers to protect public safety.¹¹⁶ As there was clear precedent for the Bureau to follow in this instance, which included an emergency necessitating Commission action to prevent a public health crisis, the issue addressed in the *800-SUICIDE Order* was not a novel question of fact, law, or policy which could not be resolved under outstanding precedents or policy. Therefore, the Bureau had delegated authority to reassign the Hotline numbers.

31. ***Due Process Argument—Takings Clause.*** KBHC argues that the Bureau's decision to remove the Hotline numbers from the control of KBHC constitutes a "taking" and must meet the requirements of the Fifth Amendment to the U.S. Constitution.¹¹⁷ We disagree. The Fifth Amendment prohibits any governmental action that deprives an individual of life, liberty, or property, without due

¹⁰⁸ See Letter from Rina Hakimian, SAMHSA, to Lee Hejmanowski, Counsel for Patriot Communications LLC, dated November 29, 2006.

¹⁰⁹ See SAMHSA Opposition to KBHC Application for Review at 4-6; SAMHSA Refresh *Ex Parte* Letter at 6 ("SAMHSA never agreed to pay the telephone service provider on behalf of KBHC."); see also SAMHSA 2006 Supplement, Broderick Decl. at 1 (stating that the grant period under which KBHC received federal funds expired in March 2005).

¹¹⁰ KBHC Application for Review at 9.

¹¹¹ *Id.* at 10.

¹¹² See 47 U.S.C. § 251(e)(1).

¹¹³ See 47 C.F.R. § 0.291(a)(2); see also 47 C.F.R. §§ 1.115, 0.91(m).

¹¹⁴ See *Red Cross Temporary Reassignment Order*, 20 FCC Rcd 15089.

¹¹⁵ See *Red Cross Permanent Reassignment Order*, 21 FCC Rcd 9925.

¹¹⁶ See *800-SUICIDE Order*, 22 FCC Rcd at 651, para. 1.

¹¹⁷ See KBHC Application for Review at 12-14.

process of law.¹¹⁸ First, KBHC is mistaken that a telephone number is “property” for Fifth Amendment purposes. Telephone numbers are not private property. Rather, telephone numbers are a scarce public resource,¹¹⁹ and neither carriers nor subscribers “own” their telephone numbers.¹²⁰ Indeed, the courts have found that no one has a property interest in a telephone number.¹²¹ Accordingly, we reject KBHC’s claim that the Bureau’s actions in the *800-SUICIDE Order* violated the Takings Clause of the Fifth Amendment.¹²²

32. In its application for review of the Bureau’s *800-SUICIDE Order*, KBHC cites no authority in support of its argument that the reassignment of a telephone number may constitute a “taking.” KBHC cites *Play Time, Inc. v. WorldCom Inc.*,¹²³ in which the U.S. Court of Appeals for the First Circuit held that neither the SMS/800 tariff nor industry guidelines foreclosed a “finding that the right to control [a number] had inherent value in the marketplace.”¹²⁴ Although there may be some inherent value in telephone numbers, including the limited right of an assignee to use and port numbers, we disagree that such an inherent value warrants a finding that a telephone number is “property” for purposes of the Takings Clause.¹²⁵ Moreover, we reject KBHC’s argument that the Commission recognized a private property interest in telephone numbers in its *Red Cross Temporary Reassignment Order*.¹²⁶ In that Order, the Commission pointed to the parties’ agreement regarding reimbursement to cover “the reasonable cost of relinquishing” the number, and did not suggest that the parties reached an agreement regarding compensation for the number itself.¹²⁷ For these reasons, we find that the Bureau’s decision in the *800-SUICIDE Order* did not violate the Fifth Amendment’s Due Process Clause.

¹¹⁸ “No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” U.S. CONST. amend. V.

¹¹⁹ See *Toll Free Second Report and Order*, 12 FCC Rcd 11178-79, para. 22.

¹²⁰ See, e.g., *Jahn v. 1-800-Flowers.com, Inc.*, 284 F.3d 807 (7th Cir. 2002), *rehearing and rehearing en banc denied* (Apr. 23, 2002); see also *Toll Free Service Access Codes*, CC Docket No. 95-155, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9061, n.14 (1998); *Toll Free Service Access Codes*, CC Docket No. 95-155, Notice of Proposed Rulemaking, 10 FCC Rcd 13692, 13702, para. 36 (1995); *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591, para. 4 (1995); *Toll Free Second Report and Order* at 11185, para. 30.

¹²¹ See, e.g., *In re StarNet, Inc.*, 355 F.3d 634, 637 (7th Cir. 2004) (stating that “[n]o one has a property interest in a phone number”).

¹²² Furthermore, assuming *arguendo* that telephone numbers could be considered property, the Bureau met all due process requirements by giving notice of the proceeding and allowing all interested parties to participate: the Commission placed SAMHSA’s Nov. 2007 Request on public notice and allowed interested parties to file comments and reply comments. See *supra* note 1.

¹²³ See KBHC Application for Review at 12-13; see also *Play Time, Inc. v. WorldCom Inc.*, 123 F.3d 23 (1997) (*Play Time*).

¹²⁴ *Play Time*, 123 F.3d at 31; see also 800 Service Management System (SMS/800) Functions Tariff, F.C.C. No. 1, section 2.3.1(A)(7), available at <http://www.sms800.com>.

¹²⁵ See, e.g., Susan Eisenberg, Note, *Intangible Takings*, 60 Vand. L. Rev. 667, 675-81 (2007) (stating that although under state and federal laws, some intangible property may constitute property under the Takings Clause, there has been no Supreme Court takings jurisprudence that has acknowledged a definitive test or rule to determine what constitutes “property” under the Takings Clause and, therefore, administrative agency regulations and traditional law prevail).

¹²⁶ See KBHC Application for Review at 13 (arguing that the Commission had recognized the “importance of adequate compensation” in its orders reassigning 1-800-RED CROSS).

¹²⁷ See *Red Cross Temporary Reassignment Order*, 20 FCC Rcd at 15091, para.6.

33. **Public Interest Argument.** We also find that the Bureau's *800-SUICIDE Order* was in the public interest. Under section 52.111 of the Commission's rules, toll free numbers are made available to end users on a first-come, first-served basis unless otherwise directed by the Commission.¹²⁸ The plain language of that rule authorizes the Commission to assign toll free numbers on a basis different than the usual first-come, first-served basis.¹²⁹ As discussed above, we believe that the Bureau's action in reassigning the Hotlines insured the continuation of a vital public service. Moreover, not only was the Commission acting in the public interest, it necessarily acted to fulfill its statutory duty to "promot[e] safety of life" in this instance.¹³⁰ For reasons already explained in this Order,¹³¹ this deviation from the first-come, first-served rule was warranted in this extraordinary situation, and was in the public interest¹³² because it fulfilled Congress's command to "promot[e] safety of life."¹³³

34. For all the reasons discussed above, we deny KBHC's application for review of the Bureau's *800-SUICIDE Order*.

IV. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 251(e), and sections 1.3 and 52.111 of the Commission's rules, 47 C.F.R. §§ 1.3 and 52.111, the request of the Substance Abuse and Mental Health Services Administration, a component of the United States Department of Health and Human Services, IS GRANTED and the toll free numbers 1-800-SUICIDE (1-800-784-2433), 1-888-SUICIDE (1-888-784-2433), and 1-877-SUICIDA (1-877-784-2432) are permanently reassigned to SAMHSA.

36. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 5(c)(5), and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c)(5), and 251(e), and sections 1.3, 1.115(g), and 52.111 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.115(g), and 52.111, Kristin Brooks Hope Center's Application for Review of the *800-SUICIDE Order* IS DENIED.

37. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 251(e), and 408 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251(e), and 408, and section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this action IS EFFECTIVE IMMEDIATELY UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹²⁸ See 47 C.F.R. § 52.111.

¹²⁹ See *id.* ("Toll free numbers shall be made available on a first-come, first-served basis *unless otherwise directed by the Commission.*") (emphasis added).

¹³⁰ 47 U.S.C. § 151.

¹³¹ See *supra* paras. 3-5.

¹³² See *800-SUICIDE Order*, 22 FCC Rcd at 652, 654, paras. 4, 8.

¹³³ 47 U.S.C. § 151.

**DISSENTING STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers*, WC Docket No. 07-271, CC Docket No. 95-155

This matter involves a discrete question: Should the Commission put itself in the position of deciding who permanently controls three toll-free suicide prevention hotline numbers? At the outset, I note that both parties involved in this matter, the federal government and a non-profit organization, have laudable interests in assisting individuals during extraordinarily difficult times in their lives and should be commended for their dedication.

Pursuant to the Communications Act, the Commission has exclusive jurisdiction over the assignment of toll-free numbers and usually assigns them on a first-come, first-served basis. And, while it is true that the Commission has the authority to deviate from this general practice to promote safety of life and property, previously the Commission has only once formally assigned a toll-free number.¹³⁴ In this matter, the Wireline Competition Bureau reassigned these numbers because there was a public health risk that phone calls to these hotline numbers may not be answered due to the financial condition of the non-profit. It should be noted, however, that the reassignment was issued on a temporary basis. In the meantime, the temporary reassignment had been extended several times to refresh the record and, in part, to re-analyze the non-profit's financial ability to maintain the three hotlines.

As a general principle, the Commission should not be in the business of picking winners and losers regarding the control of toll-free numbers and certainly should not get in the habit of analyzing entities' financial health in order to determine who should control a toll-free number. We certainly should not engage in such action without first establishing a regulatory framework through a rulemaking with an opportunity for public notice and comment. Without such a structure to discipline our decisions, we run the risk of acting in an arbitrary and capricious manner on a going forward basis. How will we handle disputes over number assignments in the future?

In the case at hand, several areas of disagreement remain. For instance, the parties disagree as to how much money the non-profit should have on hand in order to resume the management of the numbers.¹³⁵ Additionally, the parties disagree as to what rates are available for management of the numbers which ultimately would have a direct impact on how long the cash reserve would last (assuming no additional funds are raised through fundraising). Nonetheless, even given these disputes, the non-profit has committed to permanently release any claims to these numbers in the unlikely event that it runs into financial trouble again. Furthermore, although the original reassignment of the numbers served the interest of public safety, the reassignment was supposed to have been temporary, not permanent. Therefore, for all of these reasons, I disagree with the majority that the Commission should permanently reassign these numbers, and I respectfully dissent.

¹³⁴ *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 21 FCC Rcd 9925, 9927, para.5 (Wireline Comp. Bur. 2006) (*Red Cross Permanent Reassignment Order*).

¹³⁵ The non-profit has indicated that it has saved \$240,000 in cash reserves and continues fundraising efforts for these numbers.